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September 12, 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20554

**REDACTED -
For Public Inspection**

Re: Application by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization To Provide In-Region, InterLATA Services in Virginia, WC Docket 02-214

Dear Ms. Dortch:

This is the cover letter for the Reply Comments for the Application by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization To Provide In-Region, InterLATA Services in Virginia ("Reply Comments").

These Reply Comments contain confidential information. We are filing confidential and redacted versions of the Reply Comments.

1. The Reply Comments consist of (a) a stand-alone document entitled "Reply Comments by Verizon Virginia," and (b) two Reply Appendices containing supporting material.
2. Specifically, we are herewith submitting for filing:
 - a. One original of only the portions of the Reply Comments that contain confidential information (including selected portions on CD-ROM);

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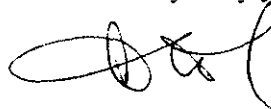
- b. One original of the redacted Reply Comments;
- c. Four copies of the redacted Reply Comments; and
- d. Five copies the redacted Reply Comments on CD-ROM.

3. We are also tendering to you certain copies of this letter and of portions of the Reply Comments for date-stamping purposes. Please date-stamp and return these materials.

4. Under separate cover, we are submitting copies (redacted as appropriate) of the Reply Comments to Ms. Janice Myles, Policy and Program Planning Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20544. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the Virginia State Corporation Commission, and to Qualex (the Commission's copy contractor).

Thank you for your assistance in this matter. If you have any questions, please call me at 202-326-7930 or Steven McPherson at 703-351-3083.

Very truly yours,

A handwritten signature in black ink, appearing to read 'E. Leo', with a large, stylized loop at the beginning.

Evan T. Leo

Encs.

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)

)
Application by Verizon Virginia Inc.,)
Verizon Long Distance Virginia Inc.,)
Verizon Enterprise Solutions Virginia)
Inc., Verizon Global Networks Inc., and)
Verizon Select Services of Virginia)
Inc., for Authorization To Provide)
In-Region, InterLATA Services in)
Virginia)

WC Docket No. 02-214

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September 12, 2002

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Catherine T. Webster
(Operations Support Systems)

Tab C — Reply Declaration of Robert W. Woltz, Jr., Patrick A. Garzillo, and
Marsha S. Prosini
(Pricing)

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INTRODUCTION AND SUMMARY

This Application presents a clear case for long distance approval. Based on a thorough review, the Virginia State Corporation Commission (“SCC”) has concluded that “Verizon Virginia currently complies with each of the fourteen Checklist Items in 47 U.S.C. § 271(c)(2)(B).” The Department of Justice (“DOJ”) likewise has concluded that local markets are open and “recommends approval” of Verizon’s Application.

These conclusions are obviously correct because Verizon has taken the same extensive steps to open its local markets in Virginia as it has taken in *eight* other Verizon states — which contain *75 percent* of Verizon’s access lines — where the Commission has found that Verizon satisfies the requirements of the 1996 Act in all respects. For example, Verizon uses substantially the same processes and procedures to provide checklist items in Virginia as it uses in its 271-approved states. Verizon also provides service to CLECs in Virginia using the same interfaces and gateway systems to access its underlying Operations Support Systems (“OSS”) as it uses in those states. And Verizon’s performance in providing access to the checklist items has been, and continues to be, excellent across the board.

Moreover, competing carriers in Virginia are actually using checklist items in large commercial volumes to enter the local market in Virginia through all three entry paths available under the Act. Indeed, Virginia has proportionately more *facilities-based* competition — including more facilities-based *residential* competition — than *any* of the other states that have been granted section 271 authority, at the time applications were filed in those states. See Application, Brief Att. A, Exs. 2 & 3.

In fact, DOJ notes only a single issue as meriting further scrutiny by the Commission based on the record through the time of its filing — namely, the accuracy of

the white pages directory listings that Verizon provides. As to that narrow issue, DOJ notes only that it does not have the benefit of a complete record (including Verizon's reply) and simply urges the Commission to assess the complete record to satisfy itself that Verizon is in compliance. And, as we show here, it is. Indeed, Verizon's systems and processes for providing such listings are the same as those used in Verizon's other 271-approved states, Verizon has implemented a number of improvements to its systems and processes over the past year, and recent data provided here in response to the parties' comments show both that these changes have resulted in demonstrable improvements, and that Verizon's performance in providing directory listings is strong. Among other things, the number of errors identified by CLECs in their listings prior to publication is now small overall, continues to decline, and marks a significant improvement over the levels that existed during the state proceedings when this issue first arose.

The remaining non-price issues raised by the commenters also do not come close to demonstrating that Verizon's Application should be denied. The vast majority of the CLECs' claims here merely rehash arguments that both this Commission and the SCC have already rejected. For the most part, the CLECs either seek to modify Verizon's checklist offerings in ways that go beyond the requirements of the Act or raise issues that the Commission repeatedly has held should be addressed in other proceedings. And to the extent CLECs raise issues here for the first time, their claims are similarly misplaced.

There also is no merit to the claims that Verizon's Application is somehow premature in light of the recent Virginia Arbitration Order. Verizon's checklist offerings in Virginia — as well as the processes and procedure used to provide them — are the same as in Verizon's 271-approved states, and the Virginia Arbitration Order does not

change that fact. Moreover, Verizon already has filed interconnection agreements that comply with the Commission's arbitration order, and has offered to make the few terms of that order that were not already addressed in existing agreements available to other CLECs in negotiations.

Likewise, the few commenters that raise pricing issues are unable to rebut Verizon's showing that the rates in Virginia comply with this Commission's precedent. On the contrary, the rates at issue here will be determined by the Commission itself in an ongoing pricing proceeding. In the meantime, the majority of the rates that are currently in effect were established by the Virginia SCC based on its own extensive TELRIC proceeding. And the rest either are lower rates that were adopted from interconnection agreements or are based on the rates recently adopted by the New York Public Service Commission ("PSC") — which the CLECs themselves have repeatedly held up as the gold standard when it comes to pricing, and which this Commission has endorsed as having consistently followed TELRIC principles. And in the case of the pricing issue that has been most heavily contested in previous applications — the switching rates — those rates will be trued-up to the switching rates set in the ongoing arbitration proceeding. In other words, the rates that carriers in Virginia will ultimately pay for unbundled switching will be the rates set by this Commission.

Finally, no commenter disputes that Verizon's entry into the long distance business in its 271-approved states has produced literally hundreds of millions of dollars of benefits for consumers through increased local and long distance competition. Consumers in Virginia are now entitled to the same benefits.

For all these reasons, the Commission should grant this Application.

I. VERIZON SATISFIES THE REQUIREMENTS OF THE COMPETITIVE CHECKLIST.

Verizon demonstrated in its Application that it is providing access to each of the 14 checklist items in substantially the same manner, and using the same processes and procedures, as in other states where the Commission has found that Verizon satisfies the 1996 Act in all respects. See Application at 8-9; Lacouture/Ruesterholz Decl. ¶¶ 8, 38; McLean/Wierzbicki/Webster Decl. ¶ 8. Verizon also demonstrated that its performance is excellent across the board, and this continues to be the case. For example, in July 2002 — the most recent month for which data are available — Verizon provided on time for competing carriers in Virginia 100 percent of their interconnection trunks, 100 percent of their collocation arrangements, more than 99 percent of their network element platform orders, more than 99 percent of their stand-alone voice-grade loop orders, more than 98 percent of their hot-cut loop orders, and more than 98 percent of their dispatch orders for unbundled DSL-capable loops. See Lacouture/Ruesterholz Reply Decl. ¶¶ 5, 20, 44, 77, 83, 86.

Verizon also demonstrated that, as was the case in Verizon's prior applications, Verizon's OSS in Virginia are in place, operational, and handling large commercial volumes. See Application at 9, 68-70; McLean/Wierzbicki/Webster Decl. ¶¶ 42, 62. Verizon provides CLECs operating in Virginia with the various checklist items using the same common interfaces and gateways to access the underlying OSS that the Commission has found satisfy the requirements of the Act on *eight* separate occasions. See Pennsylvania Order ¶¶ 11-12; New Jersey Order ¶¶ 74-75; Massachusetts Order ¶¶ 50, 70, 90, 95, 97, 102, 114; Rhode Island Order ¶ 58; Vermont Order ¶ 39; Maine Order ¶ 35; New York Order ¶ 82; Connecticut Order ¶ 53; McLean/Wierzbicki/Webster

Decl. ¶ 8. And while the underlying OSS themselves may differ in certain respects from prior states, Verizon's systems all have been subject to the same kind of exhaustive independent third-party test by KPMG on which the Commission has previously relied and that Verizon passed with flying colors. See Application at 11, 69-70; McLean/Wierzbicki/Webster Decl. ¶¶ 11, 22.

Moreover, the Virginia SCC has confirmed all of this based on a comprehensive investigation of Verizon's checklist compliance that is entitled to maximum deference under the Commission's well-settled precedent. See Application at 10 & n.11; New York Order ¶ 51; Texas Order ¶ 4. The SCC's investigation was conducted by its Hearing Examiner, which concluded, in a 170-page report, that "Verizon Virginia currently complies with each of the fourteen Checklist Items." Hearing Examiner's Report at 171.¹ The SCC has adopted its Hearing Examiner's report, which it finds "accurately and fully describes competition for local exchange services as it exists within the Commonwealth." Letter from Clinton Miller et al., Virginia SCC, to Marleen Dortch, FCC, WC Docket No. 02-214, at 1 (Aug. 1, 2002) ("SCC Letter") (Reply App. B, Tab 6). As the SCC notes, this conclusion is based "upon the results of KPMG's Virginia test and Verizon Virginia's actual commercial performance as evaluated pursuant to the FCC's precedent." Id.

The DOJ likewise concludes that "Verizon has generally succeeded in opening its local markets in Virginia." DOJ Eval. at 2. The DOJ notes only a single issue for further review by the Commission based on a complete record — the accuracy with which

¹ Verizon Virginia Inc., To Verify Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c), Report of Alexander F. Skirpan, Jr., Hearing Examiner, Case No. PUC-2002-00046 (Va. SCC July 12, 2002) ("Hearing Examiner's Report") (Application App. C, Tab 29).

Verizon provides white pages directory listings. Id. at 8. But DOJ simply urges that the Commission “assess more completely the effectiveness of Verizon’s recent improvements,” based on the complete record. Id. at 7. Accordingly, “subject to the FCC’s satisfying itself that Verizon is providing sufficiently accurate and reliable white pages directory listings,” the DOJ “recommends approval of Verizon’s application for Section 271 authority in Virginia.” Id. at 10.

As demonstrated below, the conclusions that the local market is open and that Verizon has complied with the checklist are correct, and Verizon’s Application should be granted.

A. Non-Pricing Issues.

Several commenters take issue with certain limited aspects of Verizon’s checklist compliance. For the most part, the comments simply rehash claims made during the state proceedings or in previous section 271 proceedings before this Commission. Both the SCC and this Commission have rejected these arguments in the past, and the comments fail to provide any sound reason for taking a different approach here.

A few commenters also claim that Verizon’s Application should be rejected on the grounds that Verizon has not done enough to demonstrate that it will comply with the recent Virginia Arbitration Order.² See WorldCom at 1-11; AT&T at 1-3; NTELOS at 9; Starpower/US LEC at 1-3. There is no merit to such claims. Verizon’s checklist offerings in Virginia — as well as the processes and procedures used to provide them —

² Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, Memorandum Opinion and Order, CC Docket Nos. 00-218, 00-249 & 00-251, DA 02-1731 (FCC rel. July 17, 2002) (“Virginia Arbitration Order”) (Application App. P, Tab 14).

are the same as the ones this Commission has found checklist-compliant on eight previous occasions. The Virginia Arbitration Order does not change that fact.

Moreover, Verizon already has filed interconnection agreements that comply with the Commission's order, and has offered to make the few terms of that order that were not already addressed in existing agreements available to other CLECs in negotiations. See Application at 13; Lacouture/Ruesterholz Decl. ¶ 13.³ Verizon sent an industry letter on August 1, 2002, advising CLECs in Virginia that Verizon will accept such requests from CLECs. See Ex Parte Letter from Ann Berkowitz, Verizon, to Marlene Dortch, FCC, WC Docket No. 02-214 (Aug. 2, 2002) (attaching industry letter). As of September 11, 2002, only one CLEC has requested negotiations pursuant to Verizon's offer, and Verizon is in the process of preparing an interconnection agreement amendment for that carrier. See Lacouture/Ruesterholz Reply Decl. ¶ 113. And, as demonstrated below, the Virginia Arbitration Order involves items that are similar or identical to what Verizon already provides in Virginia (e.g., interconnection trunks with DS-3 interfaces and two-way trunking); items that Verizon already has demonstrated that it can provide in other states (e.g., dark fiber through intermediate offices); and items that CLECs have demonstrated little or no interest in purchasing in the past (e.g., tandem switching and customized routing).

³ The fact that Verizon filed a petition for clarification or reconsideration of that order is irrelevant. See AT&T at 1-2. As the Commission has repeatedly held, the fact that a BOC appeals an order of a state commission or this Commission in no way affects the BOC's ability to satisfy section 271. See, e.g., Massachusetts Order ¶ 37 (approving loop rates that were subject to challenge in federal district court in Massachusetts); Texas Order ¶ 386 (finding that SBC provided reciprocal compensation consistent with the Texas PUC's orders, despite the fact that SBC was appealing those orders); Rhode Island Order ¶ 54 (approving switching rates that the Rhode Island commission would "soon" re-review).

Likewise, there is no complete-as-filed issue here. That doctrine is typically invoked to prevent a BOC from submitting new information to make its *prima facie* case after the time it files its application. See, e.g., Kansas/Oklahoma Order ¶ 21; Rhode Island Order ¶ 8; Michigan Order ¶ 50. But that is not the situation here. Verizon's Application demonstrated that Verizon complies with the checklist in Virginia and has taken the same exact steps to open its local markets that it has taken in its eight other 271-approved states. Verizon also demonstrated that it was complying with the terms of the Virginia Arbitration Order itself, both by finalizing the terms of agreements with the parties to the arbitration and, in the interim, by offering the few terms that the Commission found were required by applicable law, but which were not in existing interconnection agreements, to other carriers in negotiations.⁴ Thus, the complete-as-filed doctrine is not implicated here.

Even if the doctrine did apply, moreover, the circumstances present here are precisely the type of "special circumstances" where the Commission has held that it should be waived. Rhode Island Order ¶ 7; Kansas/Oklahoma Order ¶ 22. First, "there is no uncertainty" regarding the terms of the interconnection agreements because they are already spelled out in the Commission's order, Kansas/Oklahoma Order ¶ 23 & n.63;

⁴ This is fully consistent with the FCC's prior orders. For example, in the Massachusetts Order, the Commission found that Verizon had satisfied the requirements of the Act with respect to line splitting, and was not merely making promises of future compliance, where Verizon had sent an industry letter to CLECs about a month after it filed its application, and about three weeks after the Commission adopted new line-splitting requirements, and where Verizon had offered to "incorporate[] line splitting contract language reflecting this policy into its Model Interconnection Agreement." Massachusetts Order ¶¶ 175-181. Although WorldCom tries (at 6 n.4) to distinguish this precedent on the grounds that the rules at issue was released several days after Verizon filed its application, the Commission did not rely on that fact in its decision. See *id.* ¶¶ 176-181.

therefore, there is “a limited additional analytical burden on the Commission staff and commenting parties,” Rhode Island Order ¶ 10. *Second*, because the terms reflected in the interconnection agreements are those requested by CLECs and adopted by staff, this is an example of a “positive action that will foster the development of competition.” Id. ¶ 12; *see* Kansas/Oklahoma Order ¶ 24. *Third*, and finally, “this application is otherwise persuasive and demonstrates a commitment to opening local markets,” Rhode Island Order ¶ 12; as a result, “grant of this waiver will serve the public interest,” id. ¶ 13; Kansas/Oklahoma Order ¶ 25.

1. Interconnection.

The Virginia SCC has adopted its Hearing Examiner’s conclusion that Verizon provides nondiscriminatory access to interconnection. *See* SCC Letter at 1; Hearing Examiner’s Report at 28 (concluding that Verizon “meets the requirements . . . to provide interconnection”). No party takes issue with any part of Verizon’s performance in providing interconnection trunks or collocation to CLECs, which continues to be excellent. For example, in July 2002, Verizon met the installation appointments for providing interconnection trunks, physical collocation arrangements, and collocation augments to CLECs 100 percent of the time in Virginia. *See* Lacouture/Ruesterholz Reply Decl. ¶ 83.

Cavalier nonetheless again repeats (at 3-6) arguments that it and other CLECs have raised in prior Verizon section 271 applications regarding the language that it agreed to in its interconnection agreement addressing so-called Geographically Relevant Interconnection Points (“GRIPs”). But, in the course of the New Jersey proceeding, this Commission already considered the specific dispute that Cavalier raises here, and found

that it should be resolved by the state commission. See New Jersey Order ¶ 159 & n.487 (finding that Cavalier's "dispute concerning conflicting interpretations of an interconnection agreement should be resolved by the New Jersey Board," and noting that "Cavalier's allegations are also the subject of an ongoing proceeding in Delaware, where Cavalier's switch is located"). And, as Cavalier concedes (at 5-6), this specific dispute is already pending before the Virginia SCC. See Hearing Examiner's Report at 26 ("considering that Cavalier has a pending complaint on the matter, and thus has a potential vehicle to resolve its grievance, I find that GRIPs does not present a barrier to Verizon Virginia meeting" the checklist).⁵

In any event, as Verizon previously explained, the GRIPs proposal is not the only form of network interconnection available to CLECs in Virginia. See Lacouture/Ruesterholz Decl. ¶ 37. Verizon also has entered into interconnection agreements with CLECs in Virginia that allow the CLEC to select a single point of interconnection in the LATA and do not require GRIPs. See Application at 18; Lacouture/Ruesterholz Decl. ¶ 37; Hearing Examiner's Report at 26-27 ("There has been no showing, or complaint that the GRIPs language is the only language available Nor does this appear to be the case based on a review of the interconnection agreements supplied by Verizon Virginia."). And Verizon likewise submitted agreements with the

⁵ Cavalier also concedes that its complaints regarding collocation were resolved by a joint settlement approved by the Virginia SCC between Verizon and various CLECs. See Cavalier at 6-7 ("The Hearing Examiner concluded that the SCC's June 28, 2002 Order approving a collocation settlement between Verizon and a limited number of CLECs . . . effectively mooted most of Cavalier's complaints."); Lacouture/Ruesterholz Decl. ¶ 43; Hearing Examiner's Report at 27. Moreover, Cavalier has recently raised additional collocation issues in a petition for arbitration that is now pending before the SCC. See Lacouture/Ruesterholz Reply Decl. ¶ 84. That proceeding, not this one, is the appropriate forum in which to address Cavalier's claims.

parties to the arbitration that provide for a single point of interconnection and do not require GRIPs. See Lacouture/Ruesterholz Reply Decl. ¶ 78. Cavalier's only complaint appears to be that it does not like the terms to which it voluntarily agreed. But as the Commission has recognized, that raises no issue under the Act. See Virginia Arbitration Order ¶ 34 (finding that parties to an interconnection agreement "may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act"); Lacouture/Ruesterholz Reply Decl. ¶ 79.

Finally, WorldCom claims (at 13) that Verizon "has not yet included two-way trunking in any interconnection agreement in Virginia," but that is simply not true. Verizon's has more than 35 interconnection agreements in Virginia that include two-way trunking provisions. See Lacouture/Ruesterholz Reply Decl. ¶ 80. Although the Virginia Arbitration Order rejected language that would have made the availability of two-way trunking subject to the mutual agreement of the parties, the inclusion or exclusion of that language has no practical significance: Verizon has not rejected any CLEC requests for two-way trunking in Virginia on the grounds that Verizon and the CLEC were not able to reach mutual agreement on this contractual condition. See Lacouture/Ruesterholz Reply Decl. ¶ 81; Virginia Arbitration Order ¶ 147. And the fact of the matter is that Verizon has already provided more than 38,000 two-way trunks in Virginia. See Lacouture/Ruesterholz Reply Decl. ¶ 80.⁶

⁶ Contrary to WorldCom's claim (at 13-14), Verizon also already provides DS-3 interfaces for local interconnection trunks at certain points in its network in Virginia, and Verizon will be able to use those same processes and procedures to provide DS-3 interfaces at other technically feasible points. See Lacouture/Ruesterholz Reply Decl. ¶ 82.

2. Unbundled Network Elements.

The Virginia SCC has adopted the Hearing Examiner's findings that Verizon provides access to unbundled loops, unbundled local transport, unbundled local switching, and network element combinations in a timely and nondiscriminatory manner, and that Verizon's performance on each of these items satisfies the checklist. See SCC Letter at 1; Hearing Examiner's Report at 77 (combinations), 116 (high-capacity loops), 117 (loops), 124 (transport), 127 (switching). While CLECs take issue with certain limited aspects of these findings, their claims are without merit.

High-Capacity Loops. Verizon demonstrated in its Application that, although high-capacity loops make up less than 1 percent of all unbundled loops provided to competitors in Virginia, its performance in providing such loops has been excellent. See Application at 34; Lacouture/Ruesterholz Decl. ¶¶ 118, 120. That continues to be the case. For example, in July 2002, Verizon met approximately 95 percent of its installation appointments for CLEC high-capacity loop orders in Virginia, which is better than for the retail comparison group. See Lacouture/Ruesterholz Reply Decl. ¶ 23. During that same period, approximately 98 percent of high-capacity loops did not experience troubles in any month, and Verizon's mean time to repair the few loops that did experience troubles was shorter than the mean time to repair for the retail comparison group. See id. ¶¶ 26-27.⁷

⁷ Only one CLEC — US LEC — complains about Verizon's performance in providing high-capacity loops, claiming that it experienced 168 outages from January through May 2002 and that Verizon's mean time to repair those outages was 4.3 hours. See Starpower/US LEC at 13-14. But during that same period, Verizon's mean time to repair for the retail comparison group was 5.06 hours — 18 percent longer than for US LEC — which demonstrates that Verizon is repairing high-capacity loops in a nondiscriminatory fashion. See Lacouture/Ruesterholz Reply Decl. ¶ 29.

Several commenters nonetheless repeat claims addressed in the state proceedings concerning Verizon's rejection of orders for high-capacity loops where facilities are not available. See Allegiance at 3-4; Cavalier at 8-9; AT&T at 13-14; Covad at 23-27; Starpower/US LEC at 4-6, 10-11; NTELOS at 4-5. As Verizon explained in the Application, however, Verizon follows exactly the same practice of unbundling high-capacity loops in Virginia as it does in Pennsylvania and New Jersey, which the Commission found to comply with the checklist. See Pennsylvania Order ¶ 92; New Jersey Order ¶ 151; Hearing Examiner's Report at 116; Application at 35-36; Lacouture/Ruesterholz Decl. ¶ 127; Lacouture/Ruesterholz Reply Decl. ¶ 30.⁸ No commenter disputes this fact, which should be the end of the matter.⁹ Nor does any commenter dispute that, in some respects, Verizon also goes beyond what the Act requires and provides high-capacity loops to CLECs even where not all of the necessary facilities are available. See Application at 36; Lacouture/Ruesterholz Decl. ¶¶ 127, 129. Although a few CLECs nonetheless repeat claims about whether certain activities that Verizon must perform to provision high-capacity circuits should be characterized as new construction, see Allegiance at 5-7; Covad at 23-25, those questions are being addressed

⁸ Allegiance claims (at 6) that the Commission should ignore its findings in the Pennsylvania Order because, in light of the Virginia Arbitration Order, this issue is no longer a "new interpretative dispute" that is appropriately resolved in another forum. There is no merit to this claim. As an initial matter, the Commission expressly found that "Verizon's policies and practices" did not "violate the Commission's unbundling rules," Pennsylvania Order ¶ 92, and it reached the same conclusion in the New Jersey Order, see New Jersey Order ¶ 151. It did not base its decision on the newness of the issue. Nor does the Virginia Arbitration Order somehow alter the Commission's prior conclusions. Rather, it recognizes that Verizon does not have an obligation to construct new facilities for CLECs. See Virginia Arbitration Order ¶ 468.

⁹ Moreover, the fact that Verizon's policies have been approved for more than a year now renders irrelevant the claims of some commenters — which also were made in Pennsylvania and New Jersey — that Verizon's policies represent a sudden change designed to thwart competition. See Allegiance at 10-11; Cavalier at 8-9.

by the SCC and this Commission in separate proceedings, see Application at 36 & nn. 31-32. And, as the Commission has recognized, those forums, not this one, are the appropriate place to address these interpretative issues. See, e.g., Pennsylvania Order ¶ 92; Kansas/Oklahoma Order ¶ 19.¹⁰

In any event, Verizon's facility-build policy with respect to high-capacity loops complies with the Act and the Commission's rules. Verizon will provide high-capacity loops to CLECs where existing facilities are currently available, but will not construct new loops where the underlying network facilities needed to provide such loops have not yet been deployed. See Lacouture/Ruesterholz Decl. ¶¶ 128-133; Lacouture/Ruesterholz Reply Decl. ¶¶ 31-35; UNE Remand Order¹¹ ¶ 324. For example, Verizon will reject an order for a high-capacity loop if it does not have the necessary equipment in the central office, at the end-user's location, or in the outside plant facility, or if there is no available wire or fiber facility between the central office and the end user. See Lacouture/Ruesterholz Reply Decl. Att. 3. This is not to say, however, that Verizon refuses to take the steps necessary to provide a high-capacity loop when the underlying network facilities are already in place, which is what some commenters wrongly imply. For example, Verizon will install high-capacity cards in spare slots or ports of an

¹⁰ Allegiance's claim (at 3-4) that Verizon rejects more high-capacity loop orders on no-facilities grounds than other BOCs is not relevant because the Commission has found that Verizon's policies satisfy the Act. See, e.g., Vermont Order ¶ 57 (finding irrelevant the fact that Verizon's dark-fiber policies in Vermont were different from Verizon's policies in other states "[a]bsent evidence that Verizon's offering violates Commission rules or precedent"); Kansas/Oklahoma Order ¶ 247 (finding irrelevant in Kansas and Oklahoma complaints about SBC's policies with respect to directory listings in Illinois and Wisconsin).

¹¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order"), petitions for review granted, United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002).

equipment shelf; will perform cross-connection work between the common equipment and the wire or fiber facility between the central office and the customer's premises; will terminate a high-capacity loop at the appropriate network interface device at the customer's premises; will install a network interface device if one is not available; will attempt to correct a defect or design flaw in order to permit a loop to be used to provide a high-capacity service; and will install a doubler or repeater card on long loops (e.g., those over 12,000 feet) to enable them to be used to provide high-capacity services. See Lacouture/Ruesterholz Reply Decl. ¶¶ 31-33 & Att. 3.¹²

Moreover, if Verizon lacks the facilities necessary to provide a high-capacity loop at the time a CLEC places an order, Verizon will check its pending construction jobs to determine if there is one that would make facilities available, and in these circumstances will accept the CLEC's order and provide a due date based on the estimated completion date of the construction job and the standard interval for the CLEC's order. See Lacouture/Ruesterholz Reply Decl. ¶ 34. If, however, Verizon lacks the facilities necessary to provide a high-capacity loops, and there are no pending constructions jobs that would make the necessary facilities available, a CLEC can still order a special access circuit from Verizon's access tariffs and Verizon will then perform the necessary

¹² Allegiance complains that Verizon classifies the installation of an apparatus case and an equipment shelf as new construction, but this is entirely appropriate. As explained in more detail in the Lacouture/Ruesterholz reply declaration, each of these activities requires considerable amounts of new construction work that go well beyond Verizon's obligations to unbundle its existing network facilities. See Lacouture/Ruesterholz Reply Decl. ¶ 40. And, as Verizon explained in its Application, the same is true with respect to opening a cable sheath in order to splice a copper loop into an apparatus case. See Lacouture/Ruesterholz Decl. ¶ 132; Hearing Examiner's Report at 115; Allegiance at 5.

construction to provision that circuit. See id. ¶ 35.¹³ This policy enables CLECs to obtain the facilities they desire even when new construction is needed to provide that service.

A few CLECs nonetheless complain that ordering a special access circuit requires an additional step in the ordering process. See Cavalier at 9-10; NTELOS at 4-5. While it has no checklist obligation to do so, Verizon has been working cooperatively with CLECs in New York to eliminate that step and develop a process by which Verizon will automatically provision a special circuit for a CLEC that wants it in circumstances where facilities are not available for the high-capacity loop. See Lacouture/Ruesterholz Reply Decl. ¶ 36. This process — which Verizon plans to implement in Virginia before the end of this year — will remove the requirement that CLECs resubmit an order for a special access circuit when a high-capacity loop is unavailable. See id.

Finally, there is no merit to the claims that Verizon's policies with respect to high-capacity loops are inconsistent with its policies with respect to POTS loops provided to retail customers.¹⁴ For example, AT&T and Allegiance claim that Verizon will add a

¹³ Although a few CLECs complain about the additional time it takes Verizon to provision a special access circuit when high-capacity loop facilities are unavailable (see Allegiance at 7-8; NTELOS at 4), this is because Verizon must construct facilities for these circuits. See Lacouture/Ruesterholz Reply Decl. ¶ 37. And, while US LEC and Starpower complain (at 11-12) that Verizon's provision of special access circuits is not subject to performance standards, the Commission has repeatedly held that special access performance is not relevant to the checklist. See, e.g., New York Order ¶ 340; Massachusetts Order ¶ 211; Texas Order ¶ 335. In any event, the Commission is currently considering whether to adopt special access performance standards in an industry-wide rulemaking proceeding, and that proceeding, not this one, is the appropriate forum in which to address Starpower/US LEC's claims. See Performance Measurements and Standards for Interstate Special Access Services, Notice of Proposed Rulemaking, CC Docket Nos. 01-321 et al. (FCC rel. Nov. 19, 2001).

¹⁴ There also is no basis to AT&T's claims (noted also by the Hearing Examiner) that Verizon's policies with respect to high-capacity loops are inconsistent with its

new drop wire to the home in order to provision a residential POTS loop, but that Verizon will not do the same to provision a high-capacity loop. See Allegiance at 5; AT&T at 14. This is incorrect. Verizon's policies with respect to adding drop wires is the same for residential POTS loops (whether provided to a retail or wholesale customer) as it is for high-capacity loops. See Lacouture/Ruesterholz Reply Decl. ¶ 38. In both cases, Verizon will add a drop wire — including both an aerial drop wire on a pole and an underground drop wire in a conduit — to serve the customer, even though it is not required to do so. See id.

In any event, as Verizon explained in the Application, it is not appropriate to compare Verizon's policies with respect to adding drop wires for residential POTS loops and high-capacity loops because these kinds of loops are provisioned very differently. See Lacouture/Ruesterholz Decl. ¶ 134; Lacouture/Ruesterholz Reply Decl. ¶ 39. For example, residential POTS loops typically have a drop wire connecting Verizon's loop distribution facilities directly to the customer premises, whereas high-capacity loops are typically provisioned with a cable directly into commercial buildings and do not use individual drop wires. See Lacouture/Ruesterholz Decl. ¶ 134; Lacouture/Ruesterholz Reply Decl. ¶ 39. Moreover, between April and June 2002, fewer than 1 percent of CLEC orders for high-capacity loops were rejected for reasons involving the lack of

accounting classifications or with TELRIC pricing models. See AT&T at 14-15; Hearing Examiner's Report at 117. Regardless of whether modifications are classified as capital expenditures or expenses for accounting purposes, they still provide CLECs with access "to a yet unbuilt" network, which incumbents are not obligated to provide. Nor is the fact that TELRIC models assume that an incumbent's network will grow to meet forecasted demand relevant here. See AT&T at 15; Hearing Examiner's Report at 117. The fact that TELRIC assumes that the incumbent will continue to add facilities does not mean that, for any particular CLEC's order, facilities will actually be available to provision that order.

conduit capacity to deploy cable into an office building. See Lacouture/Ruesterholz Reply Decl. ¶ 39.

Stand-Alone Voice-Grade Loops. Verizon demonstrated in its Application that its performance in providing stand-alone voice-grade loops is excellent, see Application at 22-23, and no party challenges that showing here. Cavalier instead repeats (at 12-14) its allegation from the state proceeding that Verizon is not providing access to loops served via Integrated Digital Loop Carrier (“IDLC”).¹⁵ As Verizon demonstrated in its Application, however, this is simply not true. Although it is not technically feasible to unbundle an IDLC loop, see Georgia/Louisiana Order ¶ 50, Verizon is providing unbundled loops in these situations by using available spare copper facilities at the remote terminal or by performing a line station transfer to make spare copper facilities available, see Application at 23 n.24; Lacouture/Ruesterholz Decl. ¶ 107; Lacouture/Ruesterholz Reply Decl. ¶¶ 12-13. And while Cavalier complains (at 13-14) that these extensive efforts are somehow not adequate, they are the same steps that the Commission has found checklist-compliant in the past. See, e.g., Pennsylvania Order ¶ 87; New Jersey Order ¶ 136; Massachusetts Order ¶ 124; New York Order ¶ 273; Rhode Island Order ¶ 76; Vermont Order ¶ 48; Maine Order ¶ 44; see also Hearing

¹⁵ Cavalier also complains (at 13) that it is sometimes first made aware on the due date that a loop it has ordered cannot be provisioned because the customer is served by IDLC. But Verizon’s provisioning processes are designed to ensure that Cavalier is notified as early as possible after placing an order. See Lacouture/Ruesterholz Reply Decl. ¶ 16. If Cavalier places an order for a loop served via IDLC, that order will fall out of Verizon’s systems, and Verizon will immediately begin searching for alternative facilities and will notify Cavalier as soon as it discovers that alternative facilities are not available. See id. Verizon has strong incentives to notify Cavalier as soon as Verizon itself becomes aware that alternative facilities are unavailable, because Verizon has committed to meet standard intervals for loop installations regardless of whether the loop is served over IDLC. See id.

Examiner's Report at 112 (finding Verizon's practice checklist-compliant "based on FCC approval of the same unbundling processes and procedures in other Verizon states").¹⁶

The evidence further shows that Verizon's provision of alternative copper facilities has proven to be a viable alternative to CLECs. Verizon has made alternative copper facilities available for more than 98.5 percent of the loops served via IDLC, and, as the Hearing Examiner recognized, Verizon is making "efforts to increase the level of spare copper and universal DLC within its network." Hearing Examiner's Report at 112; see Lacouture/Ruesterholz Reply Decl. ¶ 14. And while Cavalier argues that it still has orders rejected because a customer is served by IDLC with no alternative facilities available, these orders represent a very small percentage of Cavalier's monthly loop orders. See Lacouture/Ruesterholz Reply Decl. ¶ 15.

DSL Loops. Verizon demonstrated in its Application that its performance in providing DSL loops is excellent, and no party challenges that showing here.¹⁷

Covad claims (at 3-6) that Verizon has failed to provide adequate notice and information regarding its planned deployment of a new access service — Packet at Remote Terminal Service ("PARTS") — for CLECs that provide DSL service. This new service — which is purely voluntary and not required by the Act or the Commission's rules — permits competitors with collocation in a central office to use the same facilities

¹⁶ Cavalier's claim (at 13) that customers will experience reduced dial-up modem speeds when Verizon converts them from IDLC to UDLC is misplaced. The stand-alone POTS loops that Cavalier is ordering from Verizon are designed to carry voice traffic, not data traffic, and they meet that specification regardless of whether they are provided over UDLC or IDLC technology. See Lacouture/Ruesterholz Reply Decl. ¶ 18.

¹⁷ Cavalier claims (at 11) that Verizon fails to provide DSL loops longer than 18,000 feet in length, but that is not true. Although such loops typically contain load coils that are necessary for the provision of voice service, Verizon will remove those load coils for a CLEC pursuant to an interconnection agreement and subject to applicable loop conditioning charges. See Lacouture/Ruesterholz Reply Decl. ¶ 50.

that Verizon would use to provide DSL service through remote terminals that connect to that office. See Lacouture/Ruesterholz Reply Decl. ¶¶ 51-52; see also Reply Comments of Verizon, Verizon Telephone Companies Tariff Nos. 1 & 11, Transmittal No. 232 (FCC filed Aug. 22, 2002) (describing PARTS and responding to competitors' complaints about this new service), attached to Ex Parte Letter from Ann Berkowitz, Verizon, to Marlene Dortch, FCC, WC Docket No. 02-214 (Aug. 29, 2002) ("PARTS Ex Parte"). Verizon is providing this service in addition to its current offerings that enable CLECs to interconnect their DSL equipment at remote terminals and to resell Verizon's DSL service to their customers. See Lacouture/Ruesterholz Decl. ¶ 371; Lacouture/Ruesterholz Reply Decl. ¶ 52.

Because Verizon is under no obligation to provide this service — and because it is an access service — it is irrelevant for purposes of section 271 compliance. See, e.g., Massachusetts Order ¶ 120 (holding that arguments that do "not suggest that Verizon is not in compliance with current UNE requirements" are "not relevant to our inquiry"); New York Order ¶ 340 (holding that the provision of access services is not a checklist item); Connecticut Order ¶ 50 (rejecting Covad's claims regarding a collocation price increase in Verizon's interstate access tariff filing as "not germane to this application" and "not properly considered here"). And the fact of the matter is that Verizon did provide the required notice.¹⁸ In any event, Covad has recently raised arguments similar

¹⁸ As explained in the Lacouture/Ruesterholz reply declaration, Verizon posted the network disclosure statement for PARTS on its website in February 2002. See Lacouture/Ruesterholz Reply Decl. ¶ 53. And while Verizon is not required to provide information beyond that network disclosure statement, it has done so. See id. ¶ 54. For example, Verizon began discussing PARTS in industry workshops in February and March of 2001; informed CLECs in a letter in February 2002 that it intended to deploy its first office application of PARTS; released draft ordering rules for PARTS in early April

to those it raises here in the proceeding before this Commission to review Verizon's new PARTS tariff. See PARTS Ex Parte. That proceeding, not this one, is the appropriate forum in which to address Covad's claims.

Line Sharing. As with DSL-capable loops overall, Verizon's performance in providing line sharing to CLECs has been, and continues to be, excellent. For example, in July 2002, Verizon met approximately 99 percent of its installation appointments for CLECs' non-dispatch line-sharing orders. See Lacouture/Ruesterholz Reply Decl. ¶ 65. No party challenges any aspect of Verizon's line-sharing performance.

Covad nonetheless claims (at 27-29) that Verizon violates the checklist because it does not provide line-shared loops for customers served by resale voice providers. But Verizon's practices in Virginia are identical to those that the Commission has found consistent with the Act in prior section 271 proceedings. See Massachusetts Order ¶ 165; Pennsylvania Order ¶ 88; New Jersey Order ¶ 152; Rhode Island Order ¶ 89; Vermont Order ¶ 55; Maine Order ¶ 51. As the Commission's rules make clear, Verizon is not required to provide line sharing where Verizon is not providing the voice service on the line. See Line Sharing Order ¶ 72¹⁹; Texas Order ¶ 330. And the Commission has recognized that an ILEC is not the voice provider on a line that is being resold by another carrier. See Line Sharing Order ¶ 72.²⁰

2002; and sent additional mailings to CLECs about Verizon's planned deployment of PARTS in May, June, and August 2002. See id.

¹⁹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912 (1999), vacated and remanded, United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002).

²⁰ While Covad claims (at 28-29) that the Line Sharing Order exempted Verizon from providing line sharing only on lines where competitors provide the voice service through a UNE platform, and not through resale, there is no basis for that narrow reading

Moreover, Covad is wrong that this policy is somehow discriminatory.

Competitors can compete with Verizon's combined voice and data offering on the same loop through various means, including by reselling voice and DSL together, or by using line splitting to provide voice and data service over an unbundled loop. See, e.g., Pennsylvania Order ¶¶ 89, 96 (acknowledging that Verizon satisfies its obligations to permit competitors to resell DSL services, including on resold voice lines, and that Verizon satisfies its line-splitting obligations); New Jersey Order ¶¶ 153, 161 (same); Georgia/Louisiana Order ¶ 157 (rejecting claims that BellSouth's failure to provide DSL over a competitors' UNE-P voice service on that line was discriminatory in light of other alternatives for competitors to provide voice and data over the same line); Lacouture/Ruesterholz Decl. ¶¶ 190-193; McLean/Wierzbicki/Webster Decl. Att. 2 at 13-14; Lacouture/Ruesterholz Reply Decl. ¶ 71.

Switching. Only one CLEC — WorldCom — raises an issue with respect to unbundled switching, claiming (at 9-12) that Verizon is not "operationally ready" to provide customized routing in conjunction with unbundled switching pursuant to the

of the Commission's order. Indeed, the Line Sharing Order makes clear that "in the event that the customer terminates its incumbent LEC provided voice service, *for whatever reason*, the competitive data LEC is required to purchase the full stand-alone loop network element if it wishes to continue providing xDSL service." Line Sharing Order ¶ 72 (emphasis added). And the Line Sharing Reconsideration Order further clarifies that this includes any situation where the incumbent LEC no longer "provide[s] voice service to an end user." Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 16 FCC Rcd 2101, ¶ 17 (2001). Thus, it is no answer to claim that Verizon continues to be the voice provider in a resale scenario because it "retains control of the loop facility." Covad at 28. As the Commission has made clear, the critical question is whether Verizon provides service to "an end user," and with a resold line, just as with a UNE platform, Verizon maintains no relationship to the CLECs' end-user customer.

Virginia Arbitration Order. But Verizon already provides WorldCom with the option of obtaining the same types of customized routing that it makes available to other CLECs in Virginia, and which the Commission has previously held satisfy the checklist. See Lacouture/Ruesterholz Reply Decl. ¶ 93; New York Order ¶ 346; Pennsylvania Order ¶ 120; New Jersey Order ¶ 164; Massachusetts Order ¶ 222; Rhode Island Order ¶ 97; Vermont Order ¶ 59; Maine Order ¶ 52.²¹

The issue in the Virginia Arbitration Order, therefore, was that WorldCom wanted Verizon to provide an additional form of customized routing — customized routing with Feature Group D signaling — in addition to its already compliant offering. Moreover, the Virginia Arbitration Order does not hold that this additional alternative is technically feasible. To the contrary, the order states that the parties’ “interconnection agreement should contain provisions defining Verizon’s operator services and directory assistance obligations in the event Verizon’s AIN architecture does not work as the parties anticipate.” Virginia Arbitration Order ¶ 539.²² And while the interconnection agreement that Verizon and WorldCom filed with the Commission contains a contingency provision to this effect, Verizon also has agreed to conduct a trial with

²¹ WorldCom also claims (at 13) that Verizon is not operationally ready to provide tandem switching, but Verizon makes tandem switching available as part of UNE platforms in the same way as in its 271-approved states. See Lacouture/Ruesterholz Decl. ¶ 205.

²² For this reason, there is nothing inconsistent between Verizon’s practices and the Commission’s findings in the Second Louisiana Order. See WorldCom at 11 n.10. The Commission there held only that “[i]f a competing carrier requests Feature Group D signaling and it is technically feasible for the incumbent LEC to offer it, the incumbent LEC’s failure to provide would constitute” a checklist violation. Second Louisiana Order ¶ 226. But there has been no finding — in the Virginia Arbitration Order or elsewhere — that the provision of this form of signaling is technically feasible, and as noted below Verizon and WorldCom are in the process of a trial to determine whether this is the case. See Lacouture/Ruesterholz Reply Decl. ¶¶ 95-96.

WorldCom in Virginia to determine whether this kind of signaling supports all of the operator service functions (but WorldCom has yet to take Verizon up on this offer). See Lacouture/Ruesterholz Reply Decl. ¶¶ 95-96; cf. New York Order ¶ 131 (rejecting claim that Verizon fails to satisfy the checklist because it did not yet provide the CORBA pre-ordering interface, which it still “was testing with one carrier,” in light of the fact that Verizon provided other pre-ordering interfaces to CLECs).

Transport. Verizon demonstrated in its Application that it provides unbundled dedicated and shared transport using the same processes and procedures as in its 271-approved states, and that its performance in providing transport has been excellent. See Application at 40; Lacouture/Ruesterholz Decl. ¶¶ 230-233. That continues to be the case. For example, in July 2002, Verizon met all but one of its installation appointments for unbundled dedicated transport and more than 99 percent of CLEC platform orders, all of which included shared transport. See Lacouture/Ruesterholz Reply Decl. ¶¶ 87, 100. No party challenges any aspect of Verizon’s performance.

Starpower/US LEC claims (at 16) that Verizon improperly requires it to obtain collocation in the central offices where it seeks to obtain a dedicated transport UNE.²³ But this is a term to which Starpower voluntarily agreed in its interconnection agreement

²³ Starpower also speculates (at 17-18) that Verizon “may” alter its rate structure for dedicated transport in Virginia as Starpower claims Verizon has recently done in New York. But Starpower fails to elaborate what it thinks might be wrong with the New York rate, which was approved by the New York PSC as part of an exhaustive pricing proceeding. See Woltz/Garzillo/Prosini Reply Decl. ¶¶ 27-28. In any event, the entrance facilities charges that Verizon imposes in Virginia have been approved by the Virginia SCC. See id. Starpower failed to challenge this rate in the state proceedings, which, as this Commission has recognized, is fatal to its attempt to raise its claim for the first time here. See, e.g., Vermont Order ¶ 20. The Commission also has held that issues of rate structure for UNEs are best left to state commissions to determine. See, e.g., New Jersey Order ¶ 72; see also Maine Order ¶ 29.

with Verizon. See Lacouture/Ruesterholz Reply Decl. ¶ 103. And the Virginia Arbitration Order itself expressly recognized that parties to an interconnection agreement “may agree to terms that are not compelled by, or are even inconsistent with, sections 251(b) and (c) of the Act.” Virginia Arbitration Order ¶ 34.²⁴ In any event, Verizon has filed contracts with parties to the arbitration that would permit other technically feasible means of accessing dedicated transport, and has offered to make those terms available to other carriers in negotiations. See Lacouture/Ruesterholz Reply Decl. ¶ 104.

Dark Fiber. Verizon demonstrated in its Application that the processes and procedures used to provide dark fiber are substantially the same as those in Pennsylvania, and Vermont, see Lacouture/Ruesterholz Decl. ¶¶ 234-236, where the Commission found that Verizon’s provision of dark fiber satisfies the Act, see Pennsylvania Order ¶¶ 109-113; Vermont Order ¶ 56.

Covad complains (at 29-32) about Verizon’s processes for providing information about the availability of dark fiber. But Verizon makes available several different types of dark fiber information to CLECs that enable them to do long-range planning, check the availability of dark fiber, and perform detailed engineering. See Lacouture/Ruesterholz Reply Decl. ¶ 110. For example, Verizon makes available serving wire center maps showing the streets within each wire center where there are existing fiber cable sheaths and existing fiber, although these maps do not separately identify which routes have dark fiber. See id.²⁵ Verizon also will respond to CLEC inquiries whether dark fiber is

²⁴ Nor has Starpower asked to negotiate new terms in response to the August 1, 2002 industry letter. See Lacouture/Ruesterholz Reply Decl. ¶ 104.

²⁵ Covad complains (at 30) that Verizon refused to provide maps that contain dark fiber. As noted above, however, the maps that Verizon provides include all fiber, whether lit or dark, and it is not possible to distinguish between lit and dark fiber since

available on a particular route identified by the two end points of that route. See Lacouture/Ruesterholz Reply Decl. ¶ 110. CLECs also may order an optional Field Survey prior to submitting a dark fiber request to verify the availability of spare fiber pairs and to ascertain its transmission characteristics. See id.

In response to the Virginia Arbitration Order, Verizon also has included a provision in its agreements with AT&T and WorldCom that enables a CLEC to obtain dark fiber on alternative routes (e.g., through intermediate offices) where dark fiber is not available on the direct route. See id. ¶ 112. Pursuant to these provisions, Verizon will check the availability of dark fiber on each segment of the direct route, and then attempt to identify an alternative route with dark fiber for any segment of the direct route for which dark fiber is unavailable. See id. And while WorldCom questions (at 14) whether Verizon is operationally ready to route dark fiber through intermediate offices, there is no basis to such speculation. Verizon already has experience routing dark fiber through intermediate offices in several other 271-approved states, including Maine, Massachusetts, New Hampshire, and New Jersey. See Lacouture/Ruesterholz Reply Decl. ¶ 114.

OpenBand also repeats (at 7-11) the claim it raised in the state proceeding that Verizon is improperly refusing to provide spare dark fiber facilities that are not terminated at accessible terminals. As Verizon explained in its Application, however, this claim amounts to a request that Verizon install or construct dark fiber at points in its network where it does not currently exist, see Lacouture/Ruesterholz Decl. ¶ 248; Lacouture/Ruesterholz Reply Decl. ¶ 108, which the Commission's rules do not require.

such information changes on almost a daily basis. See Lacouture/Ruesterholz Reply Decl. ¶ 111.

As the Commission held in the Virginia Arbitration Order, “Verizon’s language limiting access to hard termination points accords with the Commission’s rules.” Virginia Arbitration Order ¶ 451; see also UNE Remand Order ¶ 174 n.23 (ILEC is required to provide dark fiber only where there is “unused loop capacity that is *physically connected* to facilities that the incumbent LEC currently uses to provide service.”).

Finally, Cavalier and NTELOS repeat their claims from the state proceeding regarding Verizon’s policies of ensuring at the time a CLEC submits a collocation request that dark fiber will still be available when the collocation arrangement is completed. See Cavalier at 17-10; NTELOS at 8. As Verizon explained in the Application, however, Verizon is conducting a trial with Cavalier to address these concerns. See Lacouture/Ruesterholz Decl. ¶¶ 246-247; Lacouture/Ruesterholz Reply Decl. ¶ 109. Once that trial is complete, Verizon will amend its interconnection agreement with Cavalier to provide for parallel provisioning, and other CLECs in Virginia also will be able to request the same terms in their interconnection negotiations. See Lacouture/Ruesterholz Reply Decl. ¶ 109. And given that the trial is nearly complete and that Verizon has already offered the contract language to Cavalier, the case here is even stronger than the one in Pennsylvania, where the Commission found that Verizon’s “trial programs to address commenters concerns regarding parallel provisioning under Verizon’s current ordering systems for . . . dark fiber . . . adequately addressed” the commenters’ concerns. Pennsylvania Order ¶ 112.

UNE Combinations. Verizon demonstrated in its Application that it provides the same preassembled combinations of network elements that it provides in its states that have received section 271 approval, including both new platforms and loop and transport

combinations (i.e., EELs). See Application at 42; Lacouture/Ruesterholz Decl. ¶ 249; Pennsylvania Order ¶ 73; New Jersey Order ¶ 18; Massachusetts Order ¶¶ 117-118; Rhode Island Order ¶ 72; Vermont Order ¶ 44; Maine Order ¶ 42. Verizon also explained that, for purposes of this Application, it is not required to demonstrate that it is providing new EELs to CLECs because, while the mandate of the Supreme Court's decision in Verizon Communications Inc. v. FCC, 122 S. Ct. 1646 (2002) had already issued when Verizon filed its Application, the mandate of the Eighth Circuit's decision reinstating the new EEL requirement had not. See Application at 43; Massachusetts Order ¶ 219 (finding "not relevant to our analysis of checklist compliance" the question whether Verizon had complied with a court decision that "had not issued when Verizon filed the instant application."). Verizon nonetheless demonstrated that it was prepared to provide new EELs to CLECs in Virginia — subject to the limitations that the FCC has adopted in the Supplemental Order Clarification²⁶ that require CLECs to provide a significant amount of local traffic — as soon as the Eighth Circuit's mandate did issue, and that it had informed Virginia CLECs of that fact. See Application at 43; Lacouture/Ruesterholz Decl. ¶ 256. No party takes issue with any part of this showing, nor argues that Verizon's provision of UNE combinations is somehow inconsistent with the Commission's rules.

Starpower and US LEC are the only CLECs that take issue with Verizon's provision of combinations, arguing (at 7-9) that the limitations on the availability of

²⁶ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, 15 FCC Rcd 9587 (2000) ("Supplemental Order Clarification").

EELs adopted by the Commission are inconsistent with the Act itself.²⁷ That, of course, is the very argument that was rejected by the D.C. Circuit in the New York appeal on the ground that CLECs cannot launch collateral attacks on other Commission orders in the context of a section 271 application. See AT&T, 220 F.3d at 631 (upholding the Commission’s rejection of AT&T’s argument that the Commission’s limitations on EELs violates section 251(c)(3) on the grounds that “allowing collateral challenges” would improperly “change the nature of section 271 proceedings . . . into a wide-ranging, industry-wide examination of telecommunications law and policy”). And as the Commission itself has held, it is currently in the process of reviewing its EEL restriction in the Triennial Review proceeding, and that proceeding is the appropriate one in which to address the issue. See, e.g., Massachusetts Order ¶ 118 & n.381.

Moreover, as Verizon demonstrated in its Application, both the terms of the Supplemental Order Clarification and its reasoning make clear that the limitation on ILECs’ obligation to provide EELs applies to new EELs. See Application at 43-44.

The terms of the order on their face do not distinguish between existing and new combinations, see, e.g., Supplemental Order Clarification ¶ 2, and the underlying legal and policy rationales of the order — such as the conclusion that the “exchange access market” is distinct; that the Commission has not determined whether the “impair” standard is met with for UNEs used “solely or primarily” to serve that market,” id. ¶ 14;

²⁷ OpenBand also complains (at 16-18) that Verizon may attempt to use the bona fide request process to shift the burden of demonstrating the technical feasibility of new combinations to CLECs. But Verizon’s processes for making UNE combinations available to CLECs in Virginia are the same as in its 271-approved states. See Lacouture/Ruesterholz Decl. ¶ 249. Under these processes, OpenBand would not have the burden to establish the technical feasibility of any new combination of network elements it seeks, but would be provided with a preliminary assessment of such feasibility from Verizon within 30 days of its request. See id. ¶ 102.

and that providing such combinations at UNE rates would “undercut” existing facilities-based competition in that market, id. ¶ 18 – apply equally to both.

3. White Pages Directory Listings.

Verizon demonstrated in its Application that it provides access to its white pages directory listings in Virginia in the same manner as it does in its 271-approved states, and that it also has implemented several recent improvements. See Application at 60; Lacouture/Ruesterholz Decl. ¶ 316; Pennsylvania Order ¶¶ 114-117; New Jersey Order ¶ 156; Massachusetts Order ¶ 222; Rhode Island Order ¶ 97; Vermont Order ¶ 59; Maine Order ¶ 52. A few CLECs nonetheless have raised claims here about the accuracy of the directory listings that Verizon provides. See Cavalier at 21-27; NTELOS at 9-12. And, since it did not have the benefit of a complete record on which to evaluate these claims, DOJ simply urges the Commission to assess the full record in order to satisfy itself that Verizon provides directory listings in compliance with the Act. DOJ also recognizes that Verizon has made improvements to its systems, however, and “recognizes that the Commission may receive additional information during its consideration of Verizon’s Application, and therefore be able to assess more completely the effectiveness of Verizon’s recent improvements.” DOJ Eval. at 9. These reply comments make that showing.

As an initial matter, Verizon made two significant improvements to its directory listing systems over the past year. Although Verizon outlined those changes in its Application, DOJ notes (at 9) that it does not have sufficient information to determine whether these changes have been effective in addressing the claims by the CLECs here. Because those changes have been implemented over the course of the last year, however,